



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 17, 2012
CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Andres Toribio**
Tax Registry No. 945059
24 Precinct
Disciplinary Case No. 2010-2576

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on July 20, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-2576

1. Said Probationary Police Officer Andres Toribio, assigned to the 24th Precinct, while off-duty, on or about August 15, 2008, in New York County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Probationary Police Officer Toribio operated an unregistered motor vehicle with improper license plates.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT-PROHIBITED CONDUCT/GENERAL REGULATIONS

2. Said Probationary Police Officer Andres Toribio, assigned to the 24th Precinct, while off-duty, on or about August 30, 2008, in New York County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Probationary Police Officer Toribio operated an unregistered motor vehicle with improper license plates.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT-PROHIBITED CONDUCT/GENERAL REGULATIONS

3. Said Probationary Police Officer Andres Toribio, assigned to the 24th Precinct, while on-duty, on or about between March 17, 2010 to July 14, 2010 in that Police Officer Andres Toribio utilized a Department computer system on sixteen (16) occasions to perform tasks unrelated to the official business in the Department, to wit said Probationary Police Officer Toribio used a Department database in order to perform warrant and license checks on individuals known to the Department. (As Amended)

P.G. 219-14, Page 1, Paragraph 2 **DEPARTMENT COMPUTER SYSTEMS**

In a Memorandum dated August 7, 2012, Deputy Commissioner Martin G. Karopkin found Respondent Toribio Guilty of Specification Nos. 1, 2 and 3, in Disciplinary Case No. 2010-2576. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The misconduct in this matter warrants a greater penalty. Therefore, Respondent Toribio's disciplinary penalty shall be the forfeiture of fifteen (15) vacation days.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

August 7, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Andres Toribio
Tax Registry No. 945059
24 Precinct
Disciplinary Case No. 2010-2576

The above-named member of the Department appeared before me on July 20, 2012, charged with the following:

1. Said Probationary Police Officer Andres Toribio, assigned to the 24th Precinct, while off-duty, on or about August 15, 2008, in New York County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Probationary Police Officer Toribio operated an unregistered motor vehicle with improper license plates.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT/GENERAL REGULATIONS

2. Said Probationary Police Officer Andres Toribio, assigned to the 24th Precinct, while off-duty, on or about August 30, 2008, in New York County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Probationary Police Officer Toribio operated an unregistered motor vehicle with improper license plates.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT/GENERAL REGULATIONS

3. Said Probationary Police Officer Andres Toribio, assigned to the 24th Precinct, while on-duty, on or about between March 17, 2010 to July 14, 2010 in that Police Officer Andres Toribio utilized a Department computer system on sixteen (16) occasions to perform tasks unrelated to the official business in the Department, to wit said Probationary Police Officer Toribio used a Department database in order to perform warrant and license checks on individuals known to the Department. *(As amended)*

P.G. 219-14, Page 1, Paragraph 2 DEPARTMENT COMPUTER SYSTEMS

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified that in 2008 he owned a [REDACTED] automobile. Deciding that the [REDACTED] was too costly for him, he went to a used car dealership, [REDACTED] [REDACTED] in [REDACTED], and traded the [REDACTED] for a [REDACTED]. His license plates and registration were duly transferred to the [REDACTED] by the dealership.

After a short time, he discovered that the [REDACTED] was a lemon. He went back to the dealership which still had his [REDACTED]. They agreed to take back the [REDACTED] and give him back his [REDACTED]. The license plates were returned to the [REDACTED] and Respondent assumed that the dealership would take care of the New York State Department of Motor Vehicles (DMV) paperwork. They did not do so until he called them and complained. Respondent acknowledged that about a month passed before the paperwork was straightened out and he acknowledged that the license plates were still listed as belonging to the [REDACTED] on the dates of August 15, and 30, 2008.

Respondent represented that the license plates were always registered to him and that he had them transferred to several vehicles he has owned. Additionally, his automobiles were always properly insured.

With regard to the computer inquiries, Respondent testified that when he was first assigned to a precinct, a senior police officer told him that when he was assigned to a sector car he should check to make sure the computer in the car worked at the start of his tour. He was told to put in his own name or another close friend for that purpose. On 14 of the 16 computer checks conducted he ran his own name. On one of the checks he ran the name of his then-girlfriend and on another occasion he ran the name of a close friend. He never gave out any information he obtained from these checks to anyone.

Respondent asserted that the first time he learned this was inappropriate was at the end of his official Department interview when he was instructed on this issue. He said that now he waited until he had a real car stop to check the computer.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on July 9, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has asked for a penalty involving the loss of 35 vacation days. Respondent has acknowledged his guilt but has requested that a lesser penalty be imposed under the circumstances. It should be noted at the outset that Respondent has

provided a credible and reasonable explanation for both acts of misconduct. Further, I agree with Respondent's contention that the charges appear to be more serious than they are.

For instance, the automobile incident involves two specifications that repeat the same observation on two different days approximately 15 days apart. Usually, this kind of allegation would result in one specification covering a period of time. Indeed, Respondent acknowledges that he was driving with his license plates improperly listed at DMV for a period of about a month.

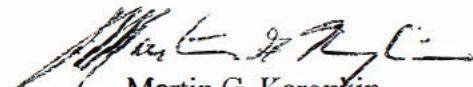
Further, reading the specification, it sounds much more serious than it is. Respondent was driving with license plates registered to him. I would note that when a vehicle is purchased through a dealership, the dealership usually takes care of the DMV paperwork. Apparently, this dealership did just that when Respondent traded the [REDACTED] [REDACTED] for the [REDACTED]. Respondent's reliance on the dealership to take care of the DMV paperwork was, therefore, quite reasonable. Respondent has acknowledged his failure to check and ensure that the dealership lived up to its responsibility when he gave the [REDACTED] back and re assumed ownership of the [REDACTED]. This failure is a far cry from someone just putting any old license plate on a vehicle and driving with intent to flout the law, which appears to be what happened in the cases cited by the Department in support of its penalty recommendation.

With regard to the misuse of a Department computer, Respondent has again offered a reasonable and unchallenged explanation. He said that he was told by a senior officer that he should check the computer at the start of his tour to make sure that it was operable. He was told to use his own name or the name of a close friend, which is

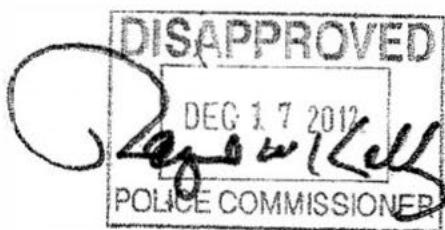
exactly what he did. His claim reflects a practice that, in fact, used to be followed by many members of this Department. The fact that he ran his own name 14 times over the course of a few months provides evidence that supports his credibility on why the computer checks were done, because there is little likelihood any information would change over so short a period of time. There is absolutely no evidence that he divulged or otherwise misused the information gained from these computer searches. Here again, the allegation sounds more serious than the actual misconduct.

At the time the events charged in this case occurred, Respondent was a probationary police officer. He has since been taken off probation. His record, in five years of service, appears to reflect that he is a productive member of the Department (see confidential memorandum). These factors, coupled with what might be termed a complete lack of "culpable mental state" in these instances, are strong mitigating factors. It is therefore recommended that Respondent forfeit 10 vacation days in this matter.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner - Trials

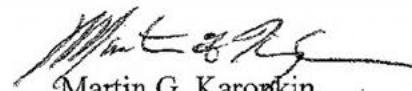


POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANDRES TORIBIO
TAX REGISTRY NO. 945059
DISCIPLINARY CASE NO. 2010-2576

In 2010 and 2011, Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2009. In his five years of service, he has made 78 arrests and [REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



Martin G. Karopkin
Deputy Commissioner – Trials